

REMARKS/ARGUMENTS

Election of a single disclosed specific specie for each of the following identified Species is required.

- 1) Species I: Applicants must elect a single specific disclosed compound or structure for (a1) and/or a single disclosed specie for (a2) that is a direct preproduct of the elected (a1).
- 2) Species II: Applicant must elect a single specific disclosed compound or structure for polyether comprising compound (b).
- 3) Species III: Applicant must elect a single specific compound or structure for polymerizable monomer (c).
- 4) Species IV: Applicant must elect a single specific compound or structure for the second polymerizable monomer (d).

Applicants provisionally elect, with traverse and for examination purposes only, the following Specie Set:

- Specie I: (a1) Mixture of vinylimidazole quaternized with dimethyl sulfate and diallyldimethylammonium chloride;  
(a2) Vinylimidazole (VI)(see formula IX) and N,N-Diallyl amine (see formula X).
- Specie II: Polymer of ethylene oxide for polyether comprising compound (B)(see Claim 18).
- Specie III: N-Vinylpyrrolidone as optional monomer (c)(Claim 13).
- Specie IV: Vinyl acetate as optional monomer (d)(Claim 15).

Claims 1-31 read on the elected species. All claims are generic.

Applicants respectfully traverse the Election Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Election of Species is only proper if the species are independent or patentably distinct and there would be a serious burden placed on the Examiner if election is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that listed species do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack:

“the same or corresponding special technical features for the following reasons: In this case, the only common feature is the polymer of Claim 1. This polymer is known in the art. See JP 2001 181354 A (cited in International Preliminary Examination Report). As such, it cannot be the special technical feature that is shared between the species. All other aspects of the species are specific to the individual species, and are not shared among the different species”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Moreover, Applicants respectfully submit that the Office has not considered the guidelines under MPEP §'s 806.04(b) and 806.05(j) in making this requirement.

MPEP § 806.04(b) states:

“Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those in MPEP § 806.05 - § 806.05(j). If restriction is improper under either practice, it should not be required.”

MPEP §806.05(j) states that related product inventions are distinct if:

“(A) the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive;  
(B) the inventions *as claimed* are not obvious variants; and  
(C) the inventions *as claimed* are either not capable of use together or can have a materially different design, mode of operation, function, or effect.”

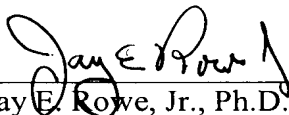
Applicants respectfully submit that the Office has not demonstrated any of the indications of distinctness (A), (B) or (C) listed in MPEP §806.05(j).

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for election of species. Applicants therefore request that the requirement for election be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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